IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6597 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAGDISHBHAI BHAILALBHAI PATEL

Versus

RAJESHBHAI B GANDHI

Appearance:

MR KIRAN C RAVAL for Petitioner

MR TS NANAVATI for Respondent No. 1

MR UA TRIVEDI, APP, for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/02/2000

ORAL JUDGEMENT

1. Rule. Mr. Nanavati waives service for opponent No.1 and Mr. Trivedi waives service for opponent No.2-State of Gujarat.

2. This is an application preferred by original complainant for cancellation of bail granted to opponent No.1 by the learned Additional Sessions Judge, Bharuch, in connection with the First Information Report which the applicant had lodged before Bharuch City "A" Division Police Station, vide C.R.-I No.120 of 1999, implicating opponent No.1 herein for offences punishable under Sections 406, 408, 468, 471, 477A and 467 of Indian Penal Code.

3. In order to appreciate the contentions raised before this Court, it would be appropriate to deal with the facts of the case in brief. According to the complainant-present applicant, opponent No.1 was working as a Senior Executive Accountant with Blue Star company. While serving, he manipulated the computer programmes and defalcated huge amount, approximately Rs.34,63,689/-. The defalcated amount has been transferred by him to his relatives and, therefore, a complaint was lodged. After the First Information Report, investigating agency arrested opponent No.1, who in turn, applied for bail before the Sessions Court, at Bharuch, vide Criminal Misc. Application No.387 of 1999 and the Sessions Court, by its reasoned order dated 21st May, 1999, admitted opponent No.1 to bail on his furnishing a bond and surety of Rs.25,000/- upon certain conditions. The first condition was that opponent No.1 shall mark his presence before Bharuch City "A" Division Police Station on 25th of every English calendar month between 10.00 A.. and 2.00 P.M. till the filing of the charge sheet. The second condition was that opponent No.1 shall not act, in any manner, which may cause prejudice to the case of the complainant nor would he indulge in to activity which may cause hindrance to investigation or which may dissuade the witnesses from disclosing the material against the accused. The third condition was that the accused shall not leave Bharuch district without prior permission of that Court till filing of charge sheet.

3.1 Aggrieved by the said order, the Blue Star Company preferred Criminal Misc. Application No.616 of 1999 before Sessions Court, at Bharuch, for cancellation of bail. The grounds for cancellation of bail were that, subsequent to release on bail, opponent No.1 approached Bank of Baroda Housing Finance for obtaining a loan, where he has falsely stated that he is in service with Blue Star. It was further stated that opponent No.1-accused has tried to transfer the funds to his sisters-in-law and has tried to influence them. The statements of sisters-in-law indicate that their accounts

were operated and managed by opponent No.1 herein.

3.2 The Sessions Court, after considering rival side contentions, came to conclusion that no case for cancellation of bail is made out and rejected the application. This has given rise to the present application.

4. Heard learned advocate Mr. Raval for the applicant, Mr. T.S. Nanavati for opponent No.1 and Mr. Trivedi for opponent No.2.

5. Mr. Raval has raised the very same contentions, which were raised before the Sessions Court. He submitted that, here is a case where opponent No.1 has schemingly defalcated huge sum from a limited company, totaling to nearly Rs.70 lakhs. He has, after misappropriating, transferred the money to some other account or claims to have invested the amount somewhere else. So far as cancellation of bail is concerned, Mr. Raval submitted that, after the release, the applicant has tried to obtain loan from Bank of Baroda Housing Finance by stating that he is in service with Blue Star Company. He has tried to transfer the funds to his sisters-in-law and the sisters-in-law, in turn, have stated that their accounts are being managed by opponent No.1. Mr. Raval, therefore, submitted that the accused-opponent No.1 has committed breach of conditions imposed by the Sessions Court while enlarging him on bail and has misused the liberty. The bail, therefore, may be cancelled.

6. Mr. Nanavati submitted that opponent No.1-accused is still in service, but is under suspension. The services are not terminated. Mr. Nanavati's another contention is that the bank accounts of the sisters-in-law of the accused are operated and taken care of by the accused. There is no prohibition on operation of those accounts by virtue of any order while admitting the accused to bail. As such, no action on part of the accused can be said to be prejudicial to the case of the complainant, i.e. present applicant. This is altogether a different transaction and, if anybody is aggrieved, it would be open for taking appropriate action for that purpose. There is no allegation of any attempt being made to influence the witnesses or tamper with the evidence and, therefore, this application may be rejected.

7. Mr. Trivedi, learned Additional Public Prosecutor, states that no cancellation of bail has been

sought by the State.

8. Having regard to the contentions raised by the learned advocates for the parties, before dealing with them, it would be appropriate if the legal position is made clear.

8.1 Keeping in mind the decision of the Apex Court in the case of Dolatram v. State of Haryana, (1995) 1 SCC 349 and and the decision in Subhendu Mishra v. Subrat Kumar Mishra and Another, A.I.R. 1999 SC 3026, bail once granted can be cancelled only if overwhelming and cogent reasons are shown. It may be that, left to itself, a Court may not grant bail. But when it comes to cancellation of bail, once it is granted, cogent and overwhelming circumstances are required to be shown for cancellation of bail.

9. In the instant case before this Court, as it is apparent from the order passed by the learned Additional Sessions Judge, Bharuch, the transaction with the Bank of Baroda is independent of the present case. It cannot be said that an attempt is made to cause prejudice to the present case of the applicant as the transactions are different. Further, as contended by Mr. Nanavati, it is not the case that opponent No.1 was not in service of the complainant-company because he is only under suspension. It also transpires from the observations made by the learned Judge that the accounts of the sisters-in-law of the accused were operated by the applicant and depositing of amounts and withdrawal of amounts were not even known to the sisters-in-law and, if that is so, there is no question of them being influenced by transfer of money to their name. Further, as rightly observed by the Sessions Court, there was no prohibition on operation of those accounts. As such, no overwhelming circumstances or cogent reasons are shown for cancellation of bail and this Court is, therefore, not inclined to entertain this application. Hence, this application deserves to be rejected and the same is rejected. Rule is discharged.

[A.L. DAVE, J.]

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